

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 97-233
Table of Allotments)	RM-9162
FM Broadcast Stations)	
(East Brewton, Alabama and)	
Navarre, Florida))	

To: Chief, Allocations Branch,
Mass Media Bureau

**COMMENTS ON
NOTICE OF PROPOSED RULEMAKING**

Root Communications Group, L.P. ("Root"), by its attorneys, respectfully files these comments with respect to the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's rules, proposed by 550-AM, to substitute Channel 239C3 for Channel 239A at East Brewton, Alabama and reallocate Channel 239C3 to Navarre, Florida. Root urges the Commission to reject this proposed amendment because the proposed reallocation conflicts with Section 307(b) of the Communications Act, which requires the Commission to allocate channels to communities; Navarre, Florida does not qualify as a community for Section 307(b) purposes.

Background.

On March 17, 1993, the Commission granted an application for a construction permit for a new FM broadcast station on Channel 239A at East Brewton, Alabama ("Construction Permit") to Escambia Creek Indian Broadcasting Company. On June 20, 1994, the Construction Permit

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was assigned from Escambia Creek Indian Broadcasting Company to P.C.I. Communications, Inc. P.C.I. Communications, Inc. filed several requests for extension of time to construct the station.¹ On July 26, 1996, the Commission consented to the assignment of the Construction Permit from P.C.I. Communications to 550-AM. On July 11, 1996, in order to obtain a grant of the assignment of permit application, Michael B. Gliner, the president and 50 percent shareholder of 550-AM, submitted an amendment to the Commission declaring his intention to proceed promptly with the construction of the station at East Brewton.² As of this date, 550-AM has not built the permitted station at East Brewton and has filed yet another request for extension of time to construct the station.³ Moreover, 550-AM does not intend to construct the facilities authorized in the Construction Permit. Rather, through the present rule making proceeding, 550-AM proposes to have the Construction Permit's community of license changed to Navarre, Florida and to upgrade the station from Class A to Class C3.

Root is the licensee of radio stations in the Panama City and Fort Walton Beach area, including WRBA (FM), Springfield, Florida. WRBA operates on Channel 240, the first adjacent channel to Channel 239, with 50 kW at 282 feet height above average terrain. WRBA currently operates at less than its fully authorized power level. Root intends to upgrade WRBA's facilities to enable the station to operate at the full power level of its licensed authorization. Root is concerned that Commission grant of the proposed reallocation of Channel 239 to Navarre will hamper Root's ability to upgrade WRBA. Further, Root questions whether Navarre has an

¹ See FCC File Nos. BMPH-950616JB and BPH-960426JA.

² See Exhibit 1 attached hereto.

³ See FCC File No. BMPH-971121JD.

economic base independent of the cities and adjacent communities of Fort Walton Beach and Panama City, Florida, sufficient to support the proposed allocation. Notwithstanding Root's own concerns regarding 550-AM's proposed amendment to the FM Table of Allotments, the public interest requires that this proposal be rejected because Navarre, Florida is not a community as defined by the Commission.

Navarre, Florida Is Not A Licensable Community.

The Communications Act directs the Commission to allot "frequencies . . . among the several States and *communities*"⁴ The Commission does not have a precise definition of community; rather a community is defined as a "geographically identifiable population grouping."⁵ The Commission has found no single attribute, except a resident population, to be the *sine qua non* of community. An area is presumed to be a community if it is either incorporated or listed in Census Bureau reports.⁶ However, a community also may be established by testimony of residents of the locality or by objective indicia.⁷ Acceptable objective indicia of community include political, commercial, social and religious organizations and services in the community.⁸ Further, these objective indicia must have a specific nexus (*i.e.*, intent to serve) to the community.⁹ In the Notice of Proposed Rulemaking in the present proceeding, the Bureau

⁴ 47 U.S.C. §307(b)(emphasis added).

⁵ *Beacon Broadcasting*, 2 FCC Rcd 3469, 3470 (1987).

⁶ See *FM Channel Policies/Procedures*, 90 FCC 2d 88, 101 (1982); *Otter Creek, Florida, Notice of Proposed Rule Making*, MM Docket 97-239, DA 97-2522 (released December 12, 1997).

⁷ *Beacon Broadcasting*, 2 FCC Rcd at 3471.

⁸ *Kenansville, Florida*, 5 FCC Rcd 2663, 2664 (1990).

⁹ *Otter Creek* at ¶12.

stated that it was unable to determine whether Navarre, Florida qualifies as a community and requested that 550-AM provide additional information about Navarre, including its population level.

Navarre is not included in the Census Bureau reports nor is it an incorporated area. Thus, the Commission must consider whether Navarre has enough objective indicia with a specific nexus to the community to be considered as a distinct population grouping.

Root has been unable to determine the population of Navarre. In discussions with the local chamber of commerce (called The Navarre Beach Chamber of Commerce) and the local branch of the West Florida Regional Library System, neither staff could provide a population figure for Navarre. Moreover, both staffs indicated that the population of the *Navarre Beach area* was approximately 18,000 persons. This fact alone strongly indicates that the residents of Navarre consider themselves to be residents of an “area” and not a community with distinct characteristics. Finally, the West Florida Regional Planning Commission stated that because there are no definite boundaries to Navarre any estimate of population would be precisely that -- an estimate.

Other indicia mitigating against a Commission finding that Navarre is a licensable community include the following:

- i. The majority of literature about the area does not refer to Navarre but to the Navarre Beach area, which encompasses Navarre Beach, Navarre and Holley;
- ii. Navarre does not have its own post office and its Zip Code default is Gulf Breeze;
- iii. Navarre does not have any type of political structure; it does not have a mayor or town council;
- iv. Navarre does not impose its own taxes; rather taxes are imposed by Santa Rosa County;

- v. Navarre residents work primarily in Milton, Pensacola, Fort Walton Beach and Mary Ester;
- vi. Navarre's schools are part of the Santa Rosa County School System and three of the four schools are named "Holley Navarre";
- vii. Navarre does not have its own police force; police protection is provided by Santa Rosa County;
- viii. The two local phone exchanges serve both Holley and Navarre;
- ix. Navarre has no government offices;
- x. Navarre has no civic organizations;
- xi. Trash collection is provided by three private companies;
- xii. Water services are provided by either the Holley Navarre Water System or the Midway Water System;
- xiii. Navarre does not have its own hospital;
- xiv. Navarre has no museums, movie theaters or any other form of entertainment; and
- xv. The library is part of the West Florida Regional Library System.¹⁰

Navarre's lack of distinct community characteristics is analogous to other instances wherein the Commission determined that a location did not have community status. For example, the Commission held that despite its having churches, a volunteer fire department, some local businesses, a town clerk, and a post office and Zip Code, the locality of Hawthorne, Wisconsin did not qualify as a community for allotment purposes.¹¹ In *Amelia, Louisiana*, the

¹⁰ The above information was gathered through discussions with the local chamber of commerce, the library branch and research on the Navarre area developed through the Internet.

¹¹ *Hawthorne, Wisconsin*, MM Docket 97-180, DA 97-2471 (released December 5, 1997).

Commission found that the lack of a local government, police, library, schools, newspaper, churches and organizations prevented Amelia from achieving community status for allotment purposes.¹² Many of the same attributes of community absent in *Hawthorne* and *Amelia* are also missing in Navarre. Thus, Navarre does not qualify for community status as defined by the Commission and should not receive an FM Allotment.

WHEREFORE, for the foregoing reasons, Root respectfully requests that the Commission deny the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's rules, as proposed in this rule making proceeding.

Respectfully submitted,

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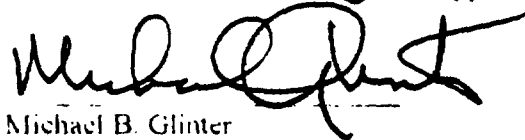
¹² *Amelia, Louisiana*, 12 FCC Rcd 13930 (1997).

EXHIBIT 1

AMENDMENT

The pending application of Michael B. Ginter ("Ginter") for consent to acquire the license for Station W.ASG(AM), Atmore, Alabama, and the construction permit for Station WZEW-FM, East Bruton, Alabama, from Creek Indian Enterprises d b a PCI Communications (B.A.L.-960515GE and B.A.PH-960515GF) is hereby amended to include the following information:

1. It is Ginter's intention if the application is granted promptly to proceed with the construction of Station WZEW-FM so as to place that station on the air at the earliest possible date.
2. Ginter has not paid, or promised, any consideration to the assignor in connection with the proposed acquisition of Stations W.ASG and WZEW-FM except for the consideration that is expressly stated in the contract for the purchase of the stations submitted with the assignment application.



Michael B. Ginter

Date: July 11, 1996

CERTIFICATE OF SERVICE

I, Nellie Martinez-Redicks, a secretary at the law firm of Arter & Hadden, hereby certify that the foregoing Comments on Notice of Proposed Rule Making has been sent, via first class mail on this 12th day of January, 1998 to the following:

William J. Pennington, III, Esq.
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Nellie Martinez-Redicks